



COMMONWEALTH of VIRGINIA

*Office of the Attorney General
Richmond 23219*

900 East Main Street
Richmond, Virginia 23219
804-786-2071
804-371-8947 TDD

MEMORANDUM

TO: **BRIAN McCORMICK**
Regulatory Coordinator
Department of Medical Assistance Services

FROM: **USHA KODURU**
Assistant Attorney General

DATE: **March 18, 2005**

SUBJECT: **Emergency Regulation to Increase Cost-Sharing Measures**

I have reviewed the attached emergency regulation that will increase cost-sharing measures by raising the amount of patient co-payments for certain services.

Based on that review, it is this Office's view that the Department of Medical Assistance Services, pursuant to Chapter 4, Item 326(EEE) of the 2004 Appropriations Act, has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

The authority for these emergency actions is found in Va. Code § 2.2-4011, which provides that an "emergency situation" includes a situation "involving an imminent threat to public health or safety..." The amendments to the regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the 2004 Appropriation Act (2004 Acts of the Assembly, Chapter 4), Item 326(EEE). Item 326(EEE) states that DMAS "shall amend its State Plan for Medical Assistance to implement and/or increase cost sharing requirements for eligible recipients as determined necessary to meet the savings targets included in this Act, consistent with federal law concerning Medicaid cost-sharing and in a manner which limits administrative complexities as deemed appropriate by the Department."

This situation qualifies as an emergency as provided in § 2.2-4011(A)(i) according to the language of the 2004 Appropriations Act, Item 326(EEE). As such, these regulations may be adopted without public comment with the prior approval of the Governor.

Accordingly, with the prior approval of the Governor, these regulations will qualify for the “emergency” exemption from Article 2 requirements. Please be advised, however, that under Va. Code § 2.2-4011(A), the Department must state in writing the nature of and necessity for such emergency action, and this appears to have been accomplished in the “Agency Background Document.” In addition, the regulations shall be effective for no more than twelve months. As the Department intends to continue regulating the subject matter governed by this emergency regulation beyond 12 months, it will be necessary to replace these emergency regulations with regulations duly promulgated under Article 2 of the APA. A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within 60 days of the effective date of the emergency regulations (and it appears that this has been done). The proposed replacement regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations.

If you have any questions or need any additional information, please feel free to contact me at 786-1840.

cc: Kim F. Piner, Esquire

Attachment